

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE,

Plaintiff,

v.

Case No: 1:22-cv-01828-SEB-MG

BUTLER UNIVERSITY,

Defendant.

DEFENDANT’S MOTION TO DISMISS PURSUANT TO RULE 12(B)(6)

Defendant, by counsel, respectfully moves this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss Plaintiff’s claims against Defendant in their entirety.

Plaintiff seeks to pursue claims for breach of contract and unjust enrichment. Neither claim can survive as a matter of law. First, Plaintiff’s breach of contract claims must be based on alleged bad faith by the University. No such bad faith is alleged in the Complaint. Second, Plaintiff cannot maintain a breach of contract claim based on nonexistent, discretionary, or aspirational policies of the University. Such policies do not constitute contractual promises to the Plaintiff and cannot provide a basis for a breach of contract claim. Finally, Plaintiff cannot pursue a claim for unjust enrichment based on the same relationship and conduct upon which his breach of contract claim is based. Based on his own allegations, Plaintiff’s sole remedy is his breach of contract claim, even if that contract does not entitle him to the relief he seeks.

As shown in the supporting brief filed contemporaneously, Plaintiff's claims for breach of contract and unjust enrichment should be dismissed for failure to state a claim upon which relief can be granted.

Respectfully submitted,

Liberty L. Roberts

Liberty L. Roberts, Atty. No. 23107-49

Cassie N. Heeke, Atty. No. 36497-49

CHURCH CHURCH HITTLE + ANTRIM

Two North Ninth Street

Noblesville, IN 46060

Attorney for Defendant Butler University

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November 2022, a true and exact copy of the foregoing was filed electronically via the Court's Electronic filing system. Notice of this filing was sent to the following persons by operation of the Court's Electronic filing system.

Jonathan Little
Gabrielle Olshemski
SAEED & LITTLE, LLP
133 W. Market Street #189
Indianapolis, IN 46204
jon@slawfirm.com
gaby@slawfirm.com

Stuart Bernstein
NESENOFF & MILTENBERG, LLP
363 Seventh Avenue, Fifth Floor
New York, New York 10001
sbernstein@nmlplaw.com

Attorneys for Plaintiff John Doe

Liberty L. Roberts
Liberty L. Roberts

CHURCH CHURCH HITTLE + ANTRIM
Two North Ninth Street
Noblesville, IN 46060
T: (317)773-2190 / F: (317)773-5320
LRoberts@cchalaw.com
CHeeke@cchalaw.com